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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89465; File No. SR-LCH SA-2020-003]

Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to LCH SA's Governance

Arrangements

August 4, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4,² notice is hereby given that on July 23, 2020, Banque Centrale de Compensation, which conducts business under the name LCH SA ("LCH SA"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change ("Proposed Rule Change"), as described in Items I, II and III below, which Items have been prepared by the clearing agency. On July 29, 2020, LCH SA filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 (the "proposed rule change"), from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

¹ 15 U.S.C. 78s(b)(1)

² 17 C.F.R. 240.19b-4.

³ LCH SA filed Amendment No. 1 to correct the Exhibit 5 to the original filing to reflect a change in Article 13 of the Terms of Reference of the Board of Directors of LCH SA, which is described below, and to correct an erroneous citation in Item II.A.2 below.

LCH SA, a registered clearing agency and self-regulatory organization, is a majority-owned subsidiary of LCH Group Holdings Limited (“LCH Group”).⁴ LCH Group is indirectly majority-owned by London Stock Exchange Group PLC (“LSEG”). LCH SA is proposing to amend its governance documents (“Governance Documents”) including: (i) the Terms of Reference (“ToR”) of the Board of Directors (“Board”); and (ii) the TOR of the current committees of the Board. The Proposed Rule Change will also establish ToR of a Nominating Committee for LCH SA.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, LCH SA included statements concerning the purpose of and basis for the Proposed Rule Change and discussed any comments it received on the Proposed Rule Change. The text of these statements may be examined at the places specified in Item IV below. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Proposed Rule Change is being adopted in significant part to conform LCH SA’s Governance Documents to actions taken by LCH Group to simplify its governing arrangements and to eliminate provisions in LCH Group’s governance documents that

⁴ LCH Group owns 88.9 percent of LCH SA; Euronext N.V. owns 11.1 percent of LCH SA. LCH Group is also the parent of LCH Limited, a central counterparty (“CCP”) authorized to offer services and activities in the European Union in accordance with the European Markets Infrastructure Regulation (“EMIR”) and registered with the Commodity Futures Trading Commission (“CFTC”) as a derivatives clearing organization (“DCO”).

they have determined are unnecessary and outdated. These changes will allow the LCH group as a whole to operate more efficiently and effectively. Although LCH SA's Governance Documents will be revised to reflect the changes to the LCH Group's governing arrangements described below, in practice, these revisions will not result in any substantive changes in LCH SA's current governance.

a. Background

In connection with its purchase of approximately 58 percent of LCH Group⁵ in 2013, LSEG entered into a Relationship Agreement with LCH Group for the purpose of (i) assuring certain protections for minority LCH Group shareholders, (ii) providing for representation of stakeholders in the CCPs that comprise LCH Group, *i.e.*, the clearing members of each CCP and the exchanges whose transactions were cleared through LCH SA or LCH Limited, and (iii) recognizing LSEG's requirements as majority shareholder for appropriate controls over LCH Group.⁶ To this end, among other provisions, the Relationship Agreement: (i) set out certain Core Operating Principles to be applied in managing the business of LCH Group; (ii) provided that the Board of Directors of LCH Group and each CCP would be comprised of a prescribed mix of independent non-executive directors, executive directors, User Directors,⁷ exchanges ("Venues") and LSEG representatives; (iii) provided that LCH Group would have a separate Audit

⁵ LCH Group was then known as LCH.Clearnet Group Limited.

⁶ As appropriate, provisions of the Relationship Agreement were reflected in the LCH Group Articles of Association and the ToR of the LCH Group Board of Directors.

⁷ User Directors are individuals that are associated with or connected to clearing members that are also shareholders of LCH Group.

Committee and Remuneration Committee independent of the parallel committees at each CCP; and (iv) provided for a Nomination Committee, which would be responsible for nominating independent non-executive directors, User Directors and Venue Directors of the Board of Directors and committee members at LCH Group and each CCP.

The Relationship Agreement also provided for certain minority protection reserved matters, which would require the approval of 80 percent of votes cast on a resolution, including: (i) altering the constitutional documents of LCH Group; (ii) making material changes to the Core Operating Principles; (iii) proposals to wind-up LCH Group or any material LCH Group company; and (iv) material amendments to the Relationship Agreement.

In addition, the Relationship Agreement contained customary consent rights for LSEG as a majority shareholder, including: (i) approval of business and budget plans; (ii) matters representing changes from the Core Operating Principles; (iii) material changes to regulatory obligations and risk profile; (iv) material acquisitions/disposals; and (v) settlement of material litigation (collectively, “Consent Matters”). The Relationship Agreement also reserved for LSEG the right to put certain matters to shareholder vote where LCH Group either failed to consider the matter or considered it and voted it down (“Push Matters”).⁸

As noted above, LCH Group has determined to simplify its governing arrangements and to eliminate provisions in LCH Group’s governance documents that are unnecessary and outdated. In this regard, LCH Group and LSEG have decided to terminate the Relationship Agreement and to remove duplication in board decision-

⁸ LSEG never exercised this right.

making between LCH Group and the CCP Boards by making the LCH Group Board an internal only board, *i.e.*, comprised only of representatives of LSEG and LCH Group. The LCH Group Articles of Association similarly will be revised to eliminate those provisions arising from the Relationship Agreement.

The Relationship Agreement is no longer necessary because certain contractual provisions are provided for in law of regulation and other provisions are historic and no longer relevant. Importantly, since 2013, LSEG has added to its shareholdings in LCH Group and now owns approximately 83 percent of LCH Group. Therefore, the minority protection provisions noted above are no longer relevant as LSEG alone could approve such matters by voting its shares. As explained below, however, certain protections in the Relationship Agreement will be incorporated into the revised ToR of the Board of Directors.⁹

b. Proposed Amendments to the ToR

As noted earlier, the Proposed Rule Change is being adopted in significant part to conform LCH SA's Governance Documents to actions taken by LCH Group to simplify its governing arrangements. These changes will allow the LCH group as a whole to operate more efficiently and effectively. Importantly, there will be no change in the proportion of independent directors¹⁰ or the number of directors representing members

⁹ Such protections include but are not limited to certain consent rights and the right to have a representative on the Board of Directors of LCH SA and LCH Limited, as well as the several committees of LCH SA and LCH Limited

¹⁰ The ToR of the LCH SA Board defines an independent director as a director who satisfies applicable Regulatory Requirements, *i.e.*, any regulation or requirement of applicable law or of any applicable regulatory body, regarding independent directors, and who is appointed in accordance with the Nomination Committee ToR.

and participants. Therefore, the Board and the committees of the Board will continue to assure fair representation of its members and participants in the selection of its directors and the administration of its affairs as provided in section 17A(b)(3)(C) of the Act.¹¹

Terms of Reference of the Board of Directors

The ToR of the Board will be amended as necessary to remove those provisions that are no longer required as a result of the termination of the Relationship Agreement and the amendment of the LCH Group Articles of Association:

- Article 2, Definitions, will be amended to remove those definitions arising from the Relationship Agreement, including: (i) Core Operating Principles; (ii) Customer; (iii) Customer Director; (iv) Group Nomination Committee (which is being disbanded); (v) LSEG Audit Representative; (vi) LSEG Consent Matters; (vii) LSEG NomCom Representative; (viii) Material Interest; (ix) Minority Protection Reserved Matters; (x) Push Matters; (xi) Relationship Agreement; (xii) Significant Interest; (xiii) Venue; (xiv) Venue Director.
- Article 3, Composition of the Board, will be amended (i) to remove the requirement that the Chairman of LCH Group will be a non-executive director of the Board, (ii) to confirm that LSEG is entitled to a representative on the Board

¹¹ 15 U.S.C. 78q-1(b)(3)(C).

unconditionally,¹² (iii) to remove the requirement for a Venue Director,¹³ and (iv) to confirm that Euronext is entitled to propose the appointment of a representative to the Board as long as either the Cash Clearing Agreement or the Derivatives Clearing Agreement between Euronext and LCH SA remains in force.¹⁴ Article 3 will be further amended to provide that the Chief Risk Officer of LCH Group may, but is not required to, be one of the three executive Directors of the Board. Article 3 currently provides that the Chief Risk Officer of LCH Group, along with the CEO of LCH SA and the CEO of LCH Group will be the executive Directors of the Board. Finally, Article 3 references the new Nomination Committee, rather than the Group Nomination Committee.

- Article 4, Rules applicable to Directors, will be amended to remove references to the Relationship Agreement (and Consent Matters, Minority Protection Reserved

¹² Article 3 currently provides that LSEG is entitled to a representative on the Board “for so long as LSEG is entitled to exercise or control the exercise of at least 5 percent of the votes able to be cast on all or substantially all matters at general meetings in LCH Group Holdings Limited”.

¹³ With the exception of Euronext, there have been no Venue representatives on the LCH SA Board for some time. This is because a Venue must also be a shareholder of LCH Group in order to qualify for representation on the Board. Nasdaq was the last significant Venue on the LCH Group shareholder register but sold its stake in 2018. Since then, there has only been one entity that is a combination of a User/Venue and that entity has shown no interest in being represented on any LCH board. Euronext was a shareholder of LCH Group, but moved its ownership stake to LCH SA in 2017. However, it is entitled to a Board representation through its contractual arrangements, *i.e.*, the Cash Clearing Agreement and Derivatives Clearing Agreement.

¹⁴ In accordance with the terms of the agreement pursuant to which Euronext N.V. purchased 11.1 percent of the shares of LCH SA, Euronext is already entitled to propose a representative to the Board.

Matters and Push Matters therein) and refer only to rights of consent that LSEG may have under this ToR.

- Article 6, Quorum, will be amended to make a technical correction to the first sentence of the article. The sentence currently provides that the Board “may validly deliberate only if half of the Directors are present.” This sentence could be interpreted to mean that the Board could not deliberate if more than half of the Directors are present, which clearly is not intended. As proposed to be revised, this sentence will confirm that the Board “may validly deliberate only if at least half of the Directors are present.”
- Article 12, Powers of the Board, will be amended to remove references to the Relationship Agreement, including the Core Operating Principles. However, the amendments to Article 12 will also confirm that the Board’s authority with respect to certain matters remains subject to LSEG’s consent. These matters, previously included in the Relationship Agreement, include: (i) approval of LCH SA’s annual operating and capital expenditure budget; (ii) approval of any material changes to LCH SA’s budget; (iii) approval of the terms and conditions of any merger agreement between the LCH SA and a third party; and (iv) approval of a decision of LCH SA to issue new shares. LSEG’s consent will also be required with regard to any matter that constitutes a material increase in the risk profile of LCH SA’s investment policy or capital management policy that would result in a material decrease in LCH SA’s available liquidity resources (subject to certain exceptions). In addition, LSEG’s consent will be required with respect to (a) any recommended changes to the structure, size and composition of

the Board that the Board, upon recommendations from the Nomination Committee, may recommend for approval by a general meeting of the shareholders, and (b) the ToR of any Board committees and any changes thereto, to the extent provided for in the ToR of the Board or the ToR of the affected committee.

Article 12 will also be amended to reflect the existing group dividend policy including the factors to be taken into account when determining the dividend (as currently set out in the Relationship Agreement and the Euronext shareholders' agreement). Dividends are subject to the vote of the shareholders, having regard for: (i) applicable regulatory and regulatory capital requirements; (ii) restrictions in any finance documents; (iii) investment to support capital expenditure contemplated by the business plan and budget from time to time, including technology, taking into account future expected cash flows; and (iv) applicable laws.

Moreover, Article 12 will be amended to clarify that the Board will approve at least annually the LCH Group Risk Governance Framework and LCH SA's various policies, including LCH SA's: (i) Financial Resource Adequacy Policy; (ii) Default Management Policy; (iii) Collateral Risk Policy; (iv) Investment Risk Policy; (v) Liquidity Risk Policy; (vi) Settlement, Payment & Custody Risk Policy; (vii) Counterparty Credit Risk Policy; (viii) Contract and Market Acceptability Policy; (ix) Model Governance, Validation & Review Policy; (x) Operational Risk Policy; (xi) and Procyclicality Policy and any significant changes to those policies upon recommendations from the Risk Committee.

Finally, Article 12 will be amended to confirm that, in appointing the Chairman of the Board and the LCH SA CEO, the Board will act in accordance with the ToR of the Nomination Committee.

- Article 13, Company management (Chairman – CEO), will be amended to provide that certain actions, which previously the CEO was authorized to take with the consent of the Board, may be undertaken only after consultation with the board of LCH Group. These activities include: (i) any type of joint venture arrangement between LCH SA and any third party; (ii) any acquisition of a business with a valuation representing five percent or more of LCH SA's net revenue stated in the last audited accounts published by LCH SA; (iii) any disposal of all or any material part of LCH SA's business; (iv) any decision to cease to operate all or any material part of LCH SA's business; (v) any acquisition or disposal of shares or any interest in shares of LCH SA, any significant investment in any third party or the making of any takeover offer; and (vi) any material acquisitions and disposals, including in relation to intellectual property and LCH SA's various business segments and group undertakings.¹⁵ In addition, Article 13 will be amended to authorize the CEO or the CEO's management team to provide to LSEG (subject to all laws and regulations (including antitrust laws and regulations)), (a) sufficient financial and other information that LSEG may reasonably require to meet any applicable reporting requirements or standards and LSEG's budgeting and forecasting processes; and (b) the audited accounts for

¹⁵ For the purposes of this paragraph, an acquisition or disposal will be material if the value of the consideration or the assets that are the subject of the transaction exceed an aggregate amount of €10,000,000.

each financial year and monthly management reports, consistent with LSEG's existing rights under the Relationship Agreement.

Article 13 will also be amended to provide that, in line with LSEG's consent rights in the Relationship Agreement, LSEG will have the right to consent with regard to the settlement of any litigation that could result in a payment to or by LCH SA in excess of €2,000,000 and with regard to any IT investments proposed to be made by LCH SA if they exceed an aggregate annual amount of € 3,000,000.

- Article 14, Conflicts of Interest, will be amended to provide that, notwithstanding the general prohibition on a Director nominated by a shareholder of LCH Group from sharing information with the shareholder of LCH Group without the consent of the independent non-executive Directors of the Board, information may be shared with LSEG, in its capacity as an indirect shareholder of LCH SA, for legal, accounting, tax regulatory or disclosure purposes.
- Article 15, Committees of the Board, will be amended to note (i) the addition of a new committee, the Technology, Security and Resilience Committee, and (ii) that the Group Nomination Committee is now the Nomination Committee, *i.e.*, a committee of LCH SA.
- Article 16, Audit Committee, will be amended to remove the requirement that the ToR of the Audit Committee must be substantially similar to the terms of reference of the Audit Committee of LCH Group (as this will no longer exist) and to recognize that changes in the ToR may be required by LCH SA's regulators (and not LCH Group's regulators) or any applicable law or regulation. The ToR

must be reviewed annually by the Board, and (ii) are subject to the approval of the Board and to the consent of LSEG, in respect of the rights of LSEG under the ToR. Finally, the amended Article 16 will confirm that a Director representing LSEG and a Director representing Euronext will be a part of the Audit Committee.

- Article 17, Risk Committee, will confirm that a Director representing LSEG will be vice-chairman of the Risk Committee. The ToR must be reviewed annually by the Board, and (ii) are subject to the approval of the Board and to the consent of LSEG, in respect of the rights of LSEG under the ToR.
- Article 18, Nomination Committee, will be amended to remove any reference to the Group Nomination Committee and the requirement that, in the event LCH SA establishes its own Nomination Committee, its ToR must be substantially similar to the terms of reference of the LCH Group Nomination Committee. As amended, Article 18 will provide that the ToR of the Nomination Committee (i) must be reviewed annually by the Board, and (ii) are subject to the approval of the Board and to the consent of LSEG.¹⁶ In addition, Article 18 confirms that a Director representing LSEG will be a member of the Nomination Committee.

¹⁶ Note that, under Article 18, LSEG's consent is required for any amendment of the ToR of the Nomination Committee, not just amendments to LSEG's rights under the ToR. The reason for this slightly wider consent right (compared to other ToRs) is that the LCH Group Nomination Committee ToR required LSEG consent for any amendment, and the Relationship Agreement required any CCP Nomination Committee to have substantially similar terms to the LCH Group Nomination Committee ToR.

- Article 19, Remuneration Committee, will be amended to remove the provision requiring the ToR to take into account the remuneration policies and principles of the LCH Group Remuneration Committee (which is being disbanded). However, the requirement to take into account the remuneration policies and principles applied by LSEG for its executive management remains. Any change in LSEG's rights under the ToR is subject to LSEG's consent. Finally, Article 19 confirms that a Director representing LSEG will be a member of LCH SA's Remuneration Committee.
- Article 20, Technology, Security and Resilience Committee, is a new article that recognizes the establishment of the Technology, Security and Resilience Committee, and provides that its organization and functions will be set out in a ToR, which are reviewed annually and subject to the approval of the Board.
- Article 25, Related party agreements between LCH SA and a manager, a Director or a shareholder, will be amended to provide that any contracts and agreements between LCH SA and LSEG or any member of the LSEG Group,¹⁷ will be subject to the prior approval of a committee of the Board consisting solely of the independent non-executive directors of LCH SA. The article further provides that approval will be given provided that the contract or agreement is on bona fide arm's length terms. The committee's determination will be final.
- New Article 26, Group Compliance, will provide that, in light of LSEG's obligations under the Financial Conduct Authority's Listing Rules, the Board will

¹⁷ LSEG Group means London Stock Exchange Group plc and its subsidiaries from time to time other than those entities comprising the LCH Group.

notify LSEG of any proposed transaction in relation to LCH SA or of which the Board is otherwise aware that may constitute for LSEG either (i) a significant transaction under Listing Rule 10, or (ii) a related party transaction under Listing Rule 11. Further, if LSEG informs the Board that the proposed transaction constitutes a transaction (or other relevant matter) under Listing Rule 10 or 11, the transaction will not take place without the prior approval of LSEG.

- New Article 27, Amendment, will provide that the Board ToR may be amended by the Board, provided that any changes to LSEG's rights or any changes which would otherwise have a detrimental effect on LSEG's rights pursuant to the ToR will be subject to LSEG's consent.

Terms of Reference of the Nomination Committee

As noted earlier, as a part of the LCH Group governance changes, the committees of the Board of LCH Group will be disbanded. Therefore, LCH SA will establish its own Nomination Committee. Although this ToR is entirely new to LCH SA, it is based in substantial part on the provisions of the Group Nomination Committee applicable to LCH SA.

The structure of the Board established under the Nomination Committee ToR will be essentially the same as it is today. Specifically, Article 2, Purpose, will provide that the Nomination Committee will recommend: (i) an independent Chairman; (ii) up to four independent directors; (iii) up to two User Directors; (iii) a director nominated by LSEG; and (iv) a director nominated by Euronext.¹⁸ In addition, the Board will have three

¹⁸ Although both LSEG and Euronext are entitled to recommend the candidate to serve as a Director of the Board, the candidates are subject to consideration by the Nomination Committee and may be rejected if the Nomination Committee

Executive Directors: (a) the CEO of LCH SA; (b) the CEO of LCH Group; and (c) the chief risk officer of LCH Group, or “such other officer as may be proposed by the Group CEO”.

As discussed above, under the Nomination Committee ToR, there will be no change in the proportion of independent directors or the number of directors representing members and participants. It should be noted, however, that the Group Nomination Committee ToR had provided for up to two representatives of Venues. As explained earlier, with the exception of Euronext, there have been no Venue representatives on the LCH SA Board for some time. Because Euronext is entitled to Board representation through its contractual arrangements, *i.e.*, the Cash Clearing Agreement and Derivatives Clearing Agreement, LCH SA has determined that there is no reason to provide for additional Venue directors in the LCH SA Nomination Committee ToR.

Article 5, Executive Management Team, will provide that LCH SA’s CEO, in consultation with the LCH Group CEO will be responsible for appointing the management team for LCH SA. This provision is intended to ensure independence at the CCP level.

Article 6, Duties and Powers of the Committee, will set out the duties and powers of the Nomination Committee. Among other duties, the committee must: (i) be satisfied that candidates understand the responsibilities of Board membership and be able to devote to necessary time to LCH SA matters; (ii) ensure that its recommended candidates

determines the candidate is not appropriate. In considering the candidates, the Nomination Committee will take into account (i) the seniority, experience, skill and expertise of each candidate, and (ii) the regulatory good standing of each candidate. ToR Articles 3 and 4.

are respected for their competence and are of good standing in their field of business; and
(iii) keep itself informed of any changes in law or regulations applicable to the
composition of the Board and other matters for which the committee is responsible.¹⁹

Article 7, Procedures of the Committee, will set out the procedures of the
Nomination Committee. As they relate to the appointment of the Chairman and the
Independent Directors, Article 7 will provide that the committee will maintain a short list
of potential candidates and consult with the CEO of LCH Group and the CEO and the
Chairman of LSEG as to the suitability of the candidates. With regard to the appointment
of a new Chairman, the committee will also consult with the Independent Directors.

Article 7 further provides that, in determining whether a candidate is fit for
appointment as Chairman or as an Independent Director, the committee will consider
whether there are relationships or circumstances (including with LSEG or any member of
LSEG Group) likely to affect such person's judgment and whether the candidate has a
relationship that would disqualify such person as a "public director" within the meaning
of CFTC rules in force from time to time or as an "independent director" under any
corporate governance standards applicable from time to time, or which the Board
otherwise determines should be complied with in the interests of best practice corporate
governance.²⁰

¹⁹ The Committee is also directed to consult periodically with the nomination
committee of LCH Limited to ensure that there is a coordinated process for the
appointment of suitable directors to the Board and the board of directors of LCH
Limited.

²⁰ If a recommended candidate appears to have any relationships that might call into
question the candidate's independence, the committee must specify why it
believes the candidate is nonetheless independent.

Finally, in making recommendations with regard to Independent Directors, the committee will take into account that there should be among the Independent Directors: (i) a breadth of industry expertise and experience and product knowledge; (ii) particular expertise and experience in each of risk management, audit, clearing services and financial services; and (iii) diversity, including gender, age, geographical provenance, and educational and professional background.

The procedures for the appointment of User Directors are set out in Appendix to Article 7 (“Appendix”). Under these procedures, if a User Director retires from the Board, the committee may invite an “Eligible User”, as defined,²¹ to nominate a candidate for appointment as a User Director on the Board (a “Nominating User”).²² In selecting Nominating Users, the committee will consider those Eligible Users that the committee considers most likely to promote the success of LCH SA, having regard for: (i) the number of each Eligible User’s contracts or trades (as the case may be) cleared by any member of LCH Group in the immediately preceding 12 months; (ii) any other contribution made to LCH Group’s business by each Eligible User, including without

²¹ As defined in the Appendix, an “Eligible User” is a User Shareholder, *i.e.*, a clearing member that is also a shareholder of LCH Group, that is not connected with an existing director (other than a director that is retiring or removed in accordance with the Appendix) and has not served notice terminating its clearing relationship with any member of LCH Group.

²² In addition to retiring voluntarily from the Board, a User Director must retire if the User Director: (i) retires or is removed as a result of the User Shareholder which nominated the User Director ceasing to be an Eligible User; (ii) retires or is removed as a result of their ceasing to be employed by, or for any other reason upon request by, the User Shareholder which nominated the User Director; (iii) retires or is removed following a change of role within the User Shareholder, if such role change would result in the User Director concerned no longer being able to maintain the relevant skill and expertise; or (iv) is disqualified or removed in accordance with the LCH SA’s articles of association.

limitation assistance provided to LCH Group in the development of new projects and the introduction to LCH Group of new clearing clients; (iii) the size of each Eligible User's shareholding in LCH Group; and (iv) how recently (if at all) the relevant Eligible User has been represented on any LCH Board, and the desirability of achieving a reasonably fair rotation of appointees among Eligible Users.

In deciding whether to approve a candidate for appointment to the Board (each, an "Approved Candidate"), the committee will have regard for: (i) the seniority, experience, skill and expertise of each candidate; (ii) the regulatory good standing of each candidate; (iii) the desirability of having deep expertise on a wide range of products, including those which pose the greatest risk challenges for LCH SA from time to time; and (iv) the desirability of having significant experience and expertise in LCH SA's principal markets; and (v) the desirability of diversity on the Board, including gender, age, geographical provenance, and educational and professional background.

From the Approved Candidates, the committee selects a number of "Proposed Directors" that is equal to the number of User Directors that are retiring from the Board and presents the Proposed Directors to LSEG for approval. If LSEG does not approve a Proposed Director, the Nominating User may accept LSEG's decision, in which case, the committee may select another Proposed Director from among the Approved Candidates to be put to LSEG for approval, or the Nominating User may propose one or more alternative candidates to be considered and, if approved, be put to LSEG for approval.²³

²³ The committee is not required to select the alternative candidate as a Proposed Candidate.

Upon approval of a Proposed Candidate by LSEG, the committee will recommend the Proposed Director's appointment to the Board.

Article 8, Tenure of Directors, will provide that each director (other than the Executive Directors and User Directors) will have, in principle, a maximum tenure on the Board of three three-year terms. However, the Committee may nominate an Independent Director for such longer period as is necessary to ensure that not all such Independent Directors' appointments terminate at the same time. All User Directors will have a tenure on the Board of one three-year term, unless otherwise agreed by the Board to ensure that not all such User Directors' appointments terminate at the same time. Article 8 further provides that the terms of appointment of each User Director will provide that the User Director must retire from the Board if any of the circumstances set out in sub-paragraphs 2(a) through 2(e) of the Appendix occurs.²⁴

Article 9, Membership of the Nomination Committee, will provide that the members of the Nomination Committee will be appointed by the Board and be comprised of four to six directors, including the Chairman, at least two Independent Directors, one User Director and the LSEG Director. The Chairman of the Board, or such other

²⁴ Paragraphs 2(a) through 2(e) of the Appendix provide that a User Director must retire if the User Director: (a) retires of the User Director's own volition; (b) retires or is removed as a result of the User Shareholder that nominated the User Director ceasing to be an Eligible User; (c) retires or is removed as a result of the User Director ceasing to be employed by, or for any other reason upon request by, the User Shareholder that nominated the User Director; (d) retires or is removed following a change of role within the User Shareholder, if such role change would result in the User Director concerned no longer being able to maintain the relevant skill and expertise; or (e) is disqualified or removed in accordance with LCH SA's Articles of Association.

Independent Director as the Independent Directors and LSEG may agree, will be the Chairman of the committee.

Articles 10 and 12 through 16 will establish the Committee's policies with regard to the conduct of meetings. In this regard, these articles provide that: (i) LCH SA's secretary will be the secretary of the Committee (Article 10); (ii) notice of meetings will be provided by the secretary or Committee Chairman in a timely manner, along with an agenda and supporting documents (Article 12); (iii) the Committee will meet at least twice each year and as necessary to fulfill its duties (Article 13); (iv) Committee meetings may be held in person, by telephone, by video conference or any combination thereof, and decisions may be made by e-mail circulation, provided approval is unanimous (Article 14); (v) one Independent Director, one User Director, and the LSEG Director must be in attendance to constitute a quorum of the Committee, authorized to exercise all authorities of the Committee (Article 15); and the secretary will prepare minutes of all Committee meetings, which will be presented to the Committee for approval at its next meeting.

Article 11, Tenure of Nomination Committee Members, will provide that, in the event a member of the Committee ceases to be a director or LCH SA, the member will automatically cease to be a member of the Committee.

Article 17, Reporting and Reviews, will provide that the Committee will furnish to the Board for approval each year a summary of (i) its activities, (ii) the process used to make nominations, (iii) a description of its policy on diversity (including gender), any measurable objectives it has set for implementing the policy and progress on achieving such objectives, and (iv) will either explain if external advice or search consultants have

not been used or, if they have been used, identify them and state whether they have a connection with LCH SA.²⁵ Article 17 will further require the Committee Chairman, or the Chairman's designee, to make available to LCH SA's Chief Compliance Officer (the "Chief Compliance Officer") such information relating to the Committee's work as is necessary for the Chief Compliance Officer to draft and submit the annual compliance reports required by the CFTC Rules and other applicable regulations in force from time to time.

Article 18, Amendment, will provide that the ToR may be amended with approval of the Board, subject to LSEG's consent.

Article 19, Confidentiality and Conflicts of Interest, will set out the requirements with respect to confidentiality and conflicts of interest and provides that all confidential matters considered by the committee and any confidential information disclosed to members of the committee in connection with their position as a member of the committee must remain confidential, notwithstanding the company to which that information relates, nor whether the member is a director of that company or not, except as required to be disclosed by law or regulation. Conflicts of interest relating to committee members will be governed by the relevant articles in LCH SA's Articles of Association.

Article 20, Other, will provide that (i) the Committee will have sufficient resources to carry out its duties, (ii) every member of the Committee will receive a copy

²⁵ Following approval of the Committee's summary, it will be included as a section in LCH SA's annual report.

of the ToR, and (iii) every member of the Committee will receive appropriate and timely training, including access to external consultancy support, when required.

Terms of Reference of the Risk Committee

No substantive changes are proposed to be made to the ToR of the Risk Committee. The ToR will be amended primarily to reflect the changes in the LCH Group governing arrangements. For example, (i) Article 1, Composition, will be revised to reference the criteria for independence set out in LCH SA's Nomination Committee ToR rather than in LCH Group's Nomination Committee ToR, and (ii) Article 16, Confidentiality and Conflicts of Interest, will be revised to remove reference to any rights LSEG may have in the Relationship Agreement and refer, instead, to rights LSEG or its representatives have under this ToR.

Article 1 will also be amended to remove as unnecessary the provision that authorized LSEG to appoint the Vice Chairman of the committee only for so long as LSEG is entitled to exercise or control the exercise of at least 40 percent of the votes able to be cast on all or substantially all matters at general meetings of LCH SA. Provided such person has the skills and experience commensurate with such a role, LSEG will be entitled to appoint the Vice Chairman of the committee without restriction.²⁶

Article 20, Other, will be amended to provide that LSEG must consent to any amendments to: (i) paragraph 1.2.6, recognizing the authority of LSEG's Head of Financial Risk (or delegate) to attend meeting of the Risk Committee; (ii) paragraph 1.4,

²⁶ Article 17 of the ToR, Harmonization with LCH Limited, will be amended to remove references to LCH LLC. LCH LLC is registered with the CFTC as a DCO, although its registration is currently dormant.

authorizing LSEG to appoint the Vice Chairman of the committee; (iii) paragraph 16.1, relating to confidentiality and conflicts of interest; and (iv) paragraph 20.6, recognizing the provisions of the ToR requiring LSEG's consent. Further, no provisions of ToR may be amended without the approval of the Board.

Terms of Reference of the Audit Committee

No substantive changes are proposed to be made to the ToR of the Audit Committee. However, Article 2, Structure and Membership, will be revised to reference the criteria for independence set out in LCH SA's Nomination Committee ToR rather than in LCH Group's Nomination Committee ToR and, further, will be amended to provide that one member of the Audit Committee will be a director recommended or approved by LSEG.²⁷

Article 3, Authority and Responsibilities, will be amended to remove the requirement that LCH SA's Audit Committee coordinate with the Audit Committee of LCH Group. However, Article will be amended to require the committee to coordinate with the Technology, Security and Resilience Committee.²⁸ In addition, Article 3 will be amended to recognize that LCH SA has more than one External Auditor, and provide that, in making recommendations to the Board concerning the appointment, evaluation and termination of the engagement of the External Auditors for LCH SA, the Committee

²⁷ Article 2 will also be amended to remove as unnecessary references to the Relationship Agreement and the paragraph providing that LSEG will have the authority to appoint a member of the committee only for so long as LSEG is entitled to exercise or control the exercise of at least 20 percent of the votes able to be cast on all or substantially all matters at general meetings of LCH Group.

²⁸ The Committee's obligation to coordinate with the LCH SA Risk Committee is unchanged.

will take into account the auditor appointed by LSEG in respect of the wider LSEG Group. Article 3 will also be amended to provide that the Committee will review the annual audit plan prepared by LCH SA's Internal Audit department after approval by the LCH SA's CEO and ahead of any submission of the plan to LCH SA's regulator, if requested by the regulator. Finally, Article 3 will be amended to remove the requirement that the Committee respond to any requests from the LCH Group Audit Committee (which is being disbanded) to vary LCH SA's internal audit program of work.

Article 5, Reporting, will be amended to confirm that Committee secretary will present all minutes of the proceedings and resolutions of all Committee meetings to the Committee for approval at the next following meeting.

Current Article 8, Annual Evaluation and Terms of Reference Review, which provides that the Committee will arrange for periodic reviews of its own performance and, at least annually, arrange for independent internal review of its constitution and these Terms of Reference, will be removed. This review is conducted, instead, by the Board and executive management.

Article 8, Amendments, will be added, which will specify those provisions of the ToR that may be approved solely by the Board and those provisions that will also require LSEG's consent.

Terms of Reference of the Remuneration Committee

The ToR of the Remuneration Committee will be amended to reflect some minor changes in the remuneration process. For example, Article 1, Duties and Powers of the Committee will be revised to provide that the remuneration policies will apply to "Specified Executives" rather than "Executive Management". This is a technical change

to confirm that the remuneration policies will apply only to those executives identified in the ToR or otherwise specified by the Board and will not apply to other LCH SA executives who otherwise might be deemed to fall within the category of “Executive Management” for other purposes. As defined, “Specified Executives” means, with respect to LCH SA, the Executive Directors, the CEO, the Chief Risk Officer, the Chief Compliance Officer, and any other personnel designated by the Board from time to time.²⁹ Further, the process by which the remuneration of the CEO or any Specified Executive may be submitted for approval by the Board and, subsequently, the LSEG remuneration committee will be simplified by removing the requirement that the Committee consult with the Chief Executive Officer of LSEG when making any change in the remuneration (including salary, bonus and long term incentives) of the CEO or any Specified Executive. It was determined that requiring the Committee to consult with the Chief Executive Officer of LSEG at the start of the process with regard to any changes in the remuneration of the LCH SA CEO or any Specified Executive is unnecessary, since the approval of the LSEG Remuneration Committee is required as a final step.³⁰ Article 1 will also be amended to require the Committee to review annually the ongoing appropriateness of any individual remuneration and to review for approval by the Board the design of all incentive plans and performance related pay schemes, including

²⁹ “Specified Executives” also include any personnel with an annual remuneration package of more than €1,000,000 or equivalent, and the Chairman of the Board.

³⁰ With regard to the remuneration of directors, Article I will be amended to provide that the committee will consult from time to time with the remuneration committee of LSEG and the remuneration committee of LCH Limited to ensure that there is a coordinated approach to the remuneration of directors on the Board and the board of directors of LCH Limited.

performance targets to be used, that are designed by and received from the LSEG remuneration committee.

Article 2, Composition of the Committee, will be revised to remove as unnecessary the provision that LSEG is entitled to appoint a representative to the committee only for so long LSEG is entitled to exercise or control the exercise of at least five percent of the votes able to be cast on all or substantially all matters at general meetings in Group.³¹ LSEG will be entitled to appoint a representative to the committee at all times. Article 2 will also authorize the LCH Group CEO to attend committee meetings as an observer.

Article 10. Amendment, will be amended to confirm those paragraphs of the ToR that may only be amended with the approval of the Board and the consent of LSEG.

Article 12, Confidentiality and Conflicts of Interest, will be revised to remove reference to any rights LSEG may have in the Relationship Agreement and refer, instead, to rights LSEG or its representatives have under this ToR.

Terms of Reference of the Technology, Security and Resilience Committee

Unrelated to the changes in its governance arrangements described above, LCH SA has also established ToR for a Technology, Security and Resilience Committee of the Board.

Article 1, Purpose, will provide that the purpose of the Committee is to “represent the interests of the Board in the sound management of technology, security and

³¹ Article 14, Other, will also be amended to remove the general provision that the rights of LSEG set out in the ToR will cease automatically if LSEG ceases to be entitled to exercise or control the exercise of at least five percent of the votes able to be cast on all or substantially all matters at general meetings of LCH Group.

operational resilience, including cyber security, to ensure that technology security and operational resilience strategies, investments and outcomes support the mission, values, and strategic goals” of LCH SA, and determine whether management has put in place adequate strategies that provide reasonable assurance that LCH SA “operates within its risk appetite and complies with regulatory requirements.”

To this end, the Committee will assist the Board in fulfilling its responsibilities relating to, *inter alia*: (i) review of LCH SA’s Operations and Technology Strategy; (ii) review of significant investments in support of this strategy including application and infrastructure architecture; (iii) review of the frameworks, policies and strategies that set the internal control environment in relation to technology, security and operational resilience; (iv) review of the Operational Risk Management Framework; (v) review of LCH SA’s Strategy for Cyber Security and Information Security and for delivery of supporting programs; (vi) review of the integration of Digital and Physical Security and their alignment with Business Continuity Plans; and (vii) providing regulatory attestations or declarations as may be required from time to time in relation to technology, security and operational resilience.

Article 2, Structure and Membership, will provide that the Committee will be comprised of at least four directors of the Board. At least two members of the Committee will be Independent Directors, one of whom will be appointed by the Chairman of the Committee. Both Independent Directors must satisfy the criteria for independence set out in the ToR of the Nomination Committee. One member of the Committee must also be a

member of the Audit Committee.³² All Committee members will be appointed by the Board in consultation with the Committee Chairman.

Article 2 will further provide that the Committee will meet as frequently as it determines necessary but must meet no less frequently than three times a year. Two members of the committee will constitute a quorum, provided at least one member is an independent director. Remuneration of the Committee members will be determined by the Board, and no member of the Committee may receive any consulting, performance, advisory or other compensatory fee from LCH SA other than fees paid in member's capacity as a member of the Board or as a member of a Committee of the Board.

Article 3, Reports to the Committee, will provide that the Committee will receive and review periodic management information for relevant operations and technology metrics and will align its meeting schedule with the requirements of the Board.

Article 4, Authority and Responsibilities, will describe the specific functions of the Committee, including: (i) reviewing LCH SA's operations and technology strategy and policies including application and infrastructure architecture; (ii) reviewing and, as appropriate, making recommendations to the Board regarding significant technology investments in support of LCH SA's technology strategy; (iii) reviewing and, as appropriate, making recommendations to the Board regarding the resources and delivery of LCH SA's technology programs; (iv) reviewing any information technology resilience, cyber and information security programs, tracking progress in relation to such programs

³² The Committee as a whole should have a breadth of experience to enable alignment with financial risk management, regulatory requirements and audit. Ideally, members of the Committee will also have significant, recent and relevant experience of the operations of LCH SA and its dependence on technology.

and providing reports to the Board as appropriate; (vi) reviewing any significant operations and technology risk exposures of LCH SA, including any detailed operational risk assessments with significant information technology elements and information security and cyber security risks, together with the steps management has taken to monitor and control such exposures; (vii) reviewing LCH SA's integrated security and resilience, including review of any new or novel approaches to information technology including security and resilience; (viii) reviewing reports from management regarding LCH SA's Business Continuity Management planning; (ix) receiving reports, as appropriate, from the Audit Committee regarding the results of reviews and assessments of LCH SA's operations and technology functions; and (x) reviewing reports, as appropriate, on operations and agreed metrics in conjunction with the Audit Committee.

Article 5, Provisions for Access, will confirm that the Committee (i) will have full and unrestricted access to management and employees of LCH SA and other members of the LCH Group, (ii) may obtain independent professional advice and the assistance of relevant experts outside of LCH SA, and (iii) will have full and unrestricted access to any systems, records, facilities or other data from LCH SA or other member of LCH Group that it requires to carry out its functions.

Article 6, Reporting, will provide that the Committee Chairman will report the Committee's discussions, decisions and recommendations to the Board, which will decide on an appropriate policy response.³³ Further, the Committee Chairman, or the Chairman's designee, will make available to LCH SA's Chief Compliance Officer such

³³ The Committee will have no executive powers with respect to its findings and recommendations.

information relating to the Committee's work as is necessary for the Chief Compliance Officer to draft and submit the annual compliance reports required by applicable regulations in force from time to time.

Article 7, Confidentiality and Conflicts of Interest, will set out the requirements with respect to confidentiality and conflicts of interest and provides that all confidential matters considered by the Committee and any confidential information disclosed to members of the Committee in connection with their position as a member of the Committee must remain confidential, notwithstanding the company to which that information relates, nor whether the member is a director of that company or not, except as required to Committee members will be governed by the relevant articles in LCH SA's Articles of Association.

2. Statutory Basis

LCH SA has determined that Proposed Rule Change is consistent with the requirements of Section 17A of the Act³⁴ and regulations thereunder applicable to it. In particular, Section 17A(b)(3)(C) of the Act provides that the rules of a clearing agency must assure fair representation of its members and participants in the selection of its directors and the administration of its affairs.

As noted above, the Proposed Rule Change will not lead to any change in the proportion of independent directors or the number of directors representing members and participants. Therefore, the Board and the committees of the Board will continue to

³⁴

Id.

assure fair representation of its members and participants in the selection of its directors and the administration of its affairs as provided in section 17A(b)(3)(C) of the Act.³⁵

Further, Section 17A(b)(3)(F) of the Act³⁶ provides that the rules of a clearing agency must be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency. In this regard, the Proposed Rule Change will make no substantive changes to the risk management policies of LCH SA or, except as explained immediately below, to the obligations of the Board with respect to risk management.

The Proposed Rule Change will amend Article 12 of the Board of Directors ToR to clarify that the Board must approve at least annually the LCH Group Risk Governance Framework and LCH SA's various policies, including LCH SA's: (i) Financial Resource Adequacy Policy; (ii) Default Management Policy; (iii) Collateral Risk Policy; (iv) Investment Risk Policy; (v) Liquidity Risk Policy; (vi) Settlement, Payment & Custody Risk Policy; (vii) Counterparty Credit Risk Policy; (viii) Contract and Market Acceptability Policy; (ix) Model Governance, Validation & Review Policy; (x) Operational Risk Policy; (xi) and Procyclicality Policy and any significant changes to those policies upon recommendations from the Risk Committee.

By making no substantive changes to the risk management policies of LCH SA or to the obligations of the Board with respect to risk management and by clarifying the obligation of LCH SA's Board to approve the above policies annually, which policies collectively assure the safeguarding of securities and funds which are in the custody or

³⁵ 15 U.S.C. 78q-1(b)(3)(C).

³⁶ 15 U.S.C. 78q-1(b)(3)(F).

control of LCH SA, the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

Commission Rule 17Ad-22(e)(2) requires each registered clearing agency to “establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that: (i) are clear and transparent; (ii) support the public interest requirements in Section 17A of the Act applicable to clearing agencies, and the objectives of owners and participants; (iii) specify clear and direct lines of responsibility; and (vi) consider the interests of participants’ customers . . . and other relevant stakeholders of the covered clearing agency.”³⁷

As discussed above, the Proposed Rule Change is being adopted in significant part to conform LCH SA’s Governance Documents to actions taken by LCH Group to simplify its governing arrangements and to eliminate provisions in LCH Group’s governance documents that are unnecessary and outdated. Importantly, LCH Group and LSEG have decided to terminate the Relationship Agreement between them and remove duplication in board decision-making between LCH Group and the CCP Boards by making the LCH Group Board an internal only board and disbanding all LCH Group committees.

By simplifying its governance arrangements and eliminating provisions in LCH Group’s governance documents that are unnecessary and outdated; by vesting in LCH SA’s CEO responsibility for appointing LCH SA’s management team; and by confirming that the Proposed Rule Change will not lead to any change in the proportion of independent directors or the number of directors representing members and participants,

³⁷ 17 C.F.R. 240.17Ad-22(e)(2).

the Proposed Rule Change enhances LCH SA's governance arrangements and assures that they (i) remain clear and transparent (ii) continue to fulfill the public interest requirements in Section 17A of the Act applicable to clearing agencies by assuring fair representation of its members and participants in the selection of its directors and the administration of its affairs, (iii) support the objectives of members and participants, (iv) specify clear and direct lines of responsibility; and (v) consider the interests of participants' customers . . . and other relevant stakeholders of the covered clearing agency, within the meaning of SEC Rule 17Ad-22(e)(2).³⁸

B. Clearing Agency's Statement on Burden on Competition

LCH SA does not believe the Proposed Rule Change would have any impact, or impose any burden, on competition. The Proposed Rule Change does not address any competitive issue or have any impact on the competition among central counterparties. LCH SA operates an open access model, and the Proposed Rule Change will have no effect on this model.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the Proposed Rule Change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

III. Date of Effectiveness of the Proposed Rule Change

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds

³⁸ 17 C.F.R. 240.17Ad-22(e)(2).

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve or disapprove such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission, or advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov.

Please include File Number LCH SA-2020-003 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-LCH SA-2020-003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-

based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at: <https://www.lch.com/resources/rules-and-regulations/proposed-rule-changes-0>. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-LCH SA-2020-003 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

J. Matthew DeLesDernier,
Assistant Secretary.

³⁹ 17 CFR 200.30-3(a)(12).

